

REMARKS

Applicant intends this response to be a complete response to the Examiner's 9 May 2005 Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

Claim Rejections - 35 U.S.C. § 112

Claims 35-36, 38-42, 44-50 and 60-68 stand rejected under 25 U.S.C. § 112, first paragraph.

Applicants *Rhodobacter capsulatus* species is available from BioStim, LLC, licensee of the technology. Thus, the public can obtain the claimed invention directly from BioStim, LLC. Applicants will also submit a viable culture to a depository if allowable subject material matures from this application. Applicants, therefore, respectfully request withdrawal of this rejection. Upon receipt of a Notice of Allowance, Applicants will make a deposit of the bacteria to a depository.

Claim Rejections - 35 U.S.C. § 102

Claims 35, 38, 39, 41, 42, 44, 45, 48 and 50 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Jong et al (KR 9411524 - DWPI Abstract), with evidence provided by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed., 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

Claims 35, 38, 39, 41, 42, 44, 45, 48 and 50 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kobayashi (JP 05247378 - CAPLUS Abstract), with evidence provided by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed. 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request

withdrawal of this section 102(b) rejection.

Claims 35, 38, 39, 41, 42, 44, 45, 48 and 50 stand rejected under 35 U.S.C. 102(b) as being anticipated by Nippon Life KK (JP 60027672 - **DWPI** Abstract), with evidence provided by the ATCC Catalogue Bacteria and Bacteriophages (18th ed., 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

Claims 35, 36, 38, 39, 41, 42, 44-48 and 50 stand rejected under 35 U.S.C. § 102(b) as being anticipated Matsuda (JP 05304959 - JPAB Abstract), with evidence provided by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed 992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

Claims 35, 38, 39, 41, 42, 44, 45, 48 and 50 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Kobayashi et al (JP 09238681 - JPAB Abstract), with evidence provided by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

Claims 35, 36, 38, 39, 41, 42, 44-48 and 50 under 35 U.S.C. § 102(b) as being anticipated by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed. 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

Rejections 35 U.S.C. § 103

Claims 35, 36, 38, 39, 41, 42, 44-48 and 50 stand rejections 35 U.S.C. § 103 (a) as being unpatentable over Jong et al. (KR 9411524 - DWPI Abstract), Kobayashi (JP 05247378-CAPLUS Abstract), Nippon Life KK (JP 60027672 - DWPI Abstract), Matsuda (JP -05304959 - JPAB Abstract), or Kobayashi et al. (JP 09238681 - JPAB Abstract), with evidence provided by the ATCC Catalogue of Bacteria and Bacteriophages (18th ed., 1992), or over the ATCC Catalogue of Bacteria and Bacteriophages (18th ed., 1992).

Applicants still disagree that Jong et al anticipate the present invention or renders the present invention obvious, but Applicants have accepted the Examiner's indication that incorporating the limitations of claims 39 and 40 into 35 would render the claim allowable and the incorporation of the limitations of claims 48 and 49 into claim 42 would render the claim allowable. To that end, Applicants submit new claims 69-71 and 72-76 replacing claims 35-38 and 38-41 and claims 42 and 44-50, respectively, rendering this 102(b) rejection moot. Applicants, therefore, respectfully request withdrawal of this section 102(b) rejection.

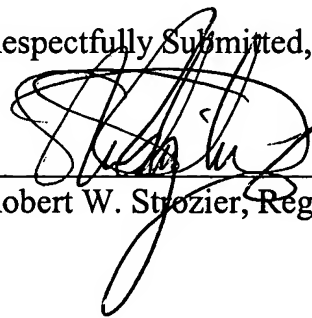
Claims 40, 49 and 60-68.

The Examiner indicates that the prior art of record does not teach or reasonably suggest a composition for controlling or eliminating the recited insect populations comprising an insecticidal effective amount of *Rhodobacter capsulatus* bacteria and an insect food, whereby the insect food comprises at least 60 wt.% carbohydrate (as well as having/providing the other recited limitations) instantly claimed in claims 40, 49, 60-68. Accordingly, appropriately incorporating the limitations of claims 39 and 40 into independent claim 35, and the limitations of claims 48 and 49 into

independent claim 42, would overcome the art rejections above (please note that if the Biological Deposit requirement, as set forth above, has not yet been met at the time of this Office action, a Notice of Allowance would still be mailed to the Applications, provided the claims are appropriately amended - with notation therein stating the Biological Deposit must be submitted: see item 7 of the Notice of Allowability from PCO-37).

The Commissioner is authorized to charge any additional claim fees to Deposit Account No. 501518.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Robert W. Strozier', is written over a horizontal line.

Date: **August 19, 2005**

Robert W. Strozier, Reg. No. 34,024